

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

COLONIAL PARKING, INC.

and

UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 27

CASE No. 04-RC-187843

**UNION'S STATEMENT IN OPPOSITION
TO REQUEST FOR REVIEW**

United Food and Commercial Workers, Local 27 ("the Union") submits this Statement in Opposition to the Request for Review filed by Colonial Parking, Inc. ("the Employer").

FACTUAL BACKGROUND

On December 1, 2016, the Regional Director directed a mail-ballot election be conducted between December 6 and December 27, 2016. Two employees, Lot Auditor Neil Blanchette and Skilled Maintenance Employee Paul York, voted subject to challenge. The mail-ballot election resulted in 10 votes for the Union and 9 votes against. The Employer did not file objections to the conduct of the election or to conduct affecting the results of the election.

On January 24, 2017, the parties participated in a hearing on the two challenged ballots. Hearing Officer Robert Gleason issued a report recommending to the Regional Director that Lot Auditor Blanchette and Skilled Maintenance Employee York be excluded from the bargaining unit and that their ballots not be opened and counted. On April 28, 2017, the Regional Director adopted the Hearing Officer's recommendation that the challenges to the ballots be sustained and issued a Certification of Representative. The Union adopts the recitation of facts in the Hearing Officer's Report, as adopted by the Regional Director. Hearing Officer's Report ("HOR") at 1–

11; Regional Director's Decision on Exceptions to the Hearing Officer's Report ("RD Decision") at 3–4.

On May 16, 2017, the Employer filed a Revised Request for Review of the Regional Director's Decision and Direction of Election and the Regional Director's Decision on Exceptions to the Hearing Officer's Report.

REASONS TO DENY REVIEW

I. The Company Forfeited Its Right to Challenge the Conduct of the Mail Ballot Election Because It Failed to File Timely Objections.

The Employer argues—for the first time—that the mail-ballot election was tainted by irregularities. Under the Board's Rules and Regulations, allegations about "the conduct of the election or . . . conduct affecting the result of the election" must be raised by filing objections within seven days of the tally of ballots. 29 C.F.R. § 102.69(a). An objection to the conduct of the mail election and any claim that voters were disenfranchised should have been raised as objections immediately after the election. Because the Employer failed to assert timely objections, it is precluded from raising these issues in this request for review before the Board. *Superior Protection Inc.*, 341 NLRB 267, 267 (2004), *reconsideration denied by* 341 NLRB 614 (2004), *enf'd by* 401 F.3d 282 (5th Cir. 2005), *cert. denied* 546 U.S. 874 (2005)); *Center for Social Change, Inc.*, 358 NLRB 161, 162 (2012) (*Noel Canning Board*). The Board should deny the Employer's request for review on this ground.

II. The Regional Director Correctly Weighed the Evidence and Adhered to Well-Established Board Precedent in Determining that the Lot Auditor and the Skilled Maintenance Employee Should Be Excluded from the Stipulated Unit.

A. The Parties' Stipulated Unit Is Controlling Because It Does Not Violate Any Statutory Provision or Establish Board Policy.

The Employer argues that the Regional Director erred by not requiring the Union to make a *prima facie* showing that the stipulated bargaining unit is a readily identifiable group that shares a community of interest. However, the Employer's previous counsel did not raise this argument at the pre-election hearing, before the Hearing Officer, nor in the Employer's post-hearing brief. Rather, the parties expressly agreed to the unit and, as the Hearing Officer noted, "The Employer d[id] not appear to deny that the agreed-upon unit employees share a community of interest." HOR at 12 n.6. That the Employer's current counsel was not present at the pre-election hearing does not permit litigation of the stipulated unit at this stage.

The Board will not consider community-of-interest arguments regarding the appropriateness of a stipulated unit unless it violates "statutory provisions or established Board policies." *Goucher College*, 364 NLRB No. 71 (2016), slip op. at 1–2. The Board's analysis in stipulated-unit cases is "not intended to afford *de novo* review of the unit." *Tiffin Enterprise, Inc.*, 258 NLRB 160, 162 (1981). Further, "a stipulated inclusion or exclusion which may not coincide with a determination which the Board would make in a nonstipulated-unit case on a 'community of interest' basis is not a violation of Board policy such as would justify overriding the stipulation." *Goucher College*, 364 NLRB No. 71, at 3 (Miscimarra, concurring) (quoting *White Cloud Prods., Inc.*, 214 NLRB 516, 517 (1974)). "Were the Board 'to review [the parties'] stipulation *de novo*, and make [its] own findings, [it] would be undercutting the very agreement which served as the basis for conducting the election." *Id.* (Miscimarra, concurring) (alterations

in original) (quoting *Tribune Co.*, 190 NLRB 398, 398 (1971)). Nothing in *Specialty Healthcare* changes this well-established Board law.

As the Regional Director's Direction of Election makes clear, the parties stipulated that the following employees constitute an appropriate bargaining unit:

All full-time and regular part-time Attendants, Lot Attendants, Valet Attendants, Cashiers, Customer Service Employees, Floaters, and Maintenance Associates employed by the Employer [at 13 locations in Wilmington, Delaware], excluding all office clerical employees, administrative and bookkeeping employees, managerial employees, guards and supervisors as defined by the Act.

Board Ex. 1. The Employer points to no statutory provision or Board policy that suggests this unit violates the Act. The Employer's only argument is that the employees within the stipulated unit do not share a community of interest.¹ That is an argument that the Employer should have litigated before the election. It is not entitled now to appear through new counsel to bring a collateral attack on the unit to which it stipulated. *Goucher College*, 364 NLRB No. 71, at 3 (Miscimarra, concurring); *White Cloud Prods., Inc.*, 214 NLRB at 517.

B. The Lot Auditor and the Skilled Maintenance Employee Do Not Share a Sufficient Community of Interest with the Stipulated Bargaining Unit.

The Employer contends that the Regional Director's decision misstates the record and misapplies the applicable Board precedent in excluding Lot Auditor Blanchette and Skilled Maintenance Employee York from the stipulated unit. To the contrary, the Regional Director properly weighed the record evidence and concluded that Blanchette and York: (1) perform different functions; (2) travel outside of the unit each day; (3) have limited contact with employees in the stipulated unit; (4) do not interchange with employees in the stipulated unit;

¹ To support this argument, the Employer relies on cases in which the parties did not stipulate to a bargaining unit, but rather the Board determined an appropriate unit after a pre-election hearing. See *Wheeling Island Gaming*, 355 NLRB 637, 637 (2010); *NLRB v. FedEx Freight, Inc.*, 832 F.3d 432, 446 (3d Cir. 2016); *Constellation Brands v. NLRB*, 842 F.3d 784, 788 (2d Cir. 2016).

(5) are separately supervised by Areas Managers; and (6) receive higher wages than employees in the stipulated unit. RD Decision at 5. This is a conclusion dictated by generations of Board decisions that employees who are “separately located and supervised and have little, if any, contact with unit employees in the performance of day-to-day duties, . . . do not have sufficient community of interest with the unit employees to require their inclusion in the unit.” *Federal Electric Corp.*, 191 NLRB 859, 861 (1971). In light of the clear evidence in support of Regional Director’s decision, the Board should deny the Employer’s request for review.

1. The Lot Auditor and the Skilled Maintenance Employee perform different functions than the employees in the stipulated bargaining unit.

The Regional Director correctly concluded that Blanchette and York perform different functions than the employees in the bargaining unit. RD Decision at 5. The Board has approved units of select jobs classifications where the unit employees’ “functions are entirely distinct from the functions of [other employees].” *DTG Operations*, 357 NLRB 2122, 2126–27 (2011). In fact, a unit is appropriate even where “the Employer’s facility is functionally integrated, . . . [but] each classification has a separate role in the process.” 357 NLRB at 2128; *see also Overnite Transportation*, 322 NLRB 723, 726 (1996) (excluding mechanics because they “have specialized skills and training to repair and maintain the Employer’s . . . equipment, are separately supervised, do not regularly interchange with drivers and dock employees, work different hours, and are the only employees on call.”).

Here, the different job functions of Blanchette and York preclude any claim that they share an overwhelming community of interest with the bargaining unit employees. Blanchette and York perform specialized job duties that the employees in the stipulated unit do not perform. For example, unlike Blanchette, bargaining unit employees do not carry barcode scanners to check parking permits or regularly place wheel-lock boots on improperly parked vehicles. Post-

Election Hearing Transcript (“Tr.”) at 144, 127. Unlike York, bargaining unit employees—including Maintenance Associates—do not pick up trash from other parking facilities, clear leaves or snow, or build replacement gates for the parking facilities. Tr. at 137, 146. Bargaining unit employees do not drive Company vehicles. Tr. at 146. Unlike the bargaining unit employees, Blanchette and York testified that they rarely interact with customers or provide any direct service to them. Tr. at 18, 60.

The Employer also argues that Skilled Maintenance Employee York is, in fact, a Maintenance Associate. This is not the case. Although York’s job title contains the word “maintenance,” York’s job duties, wage rate, and supervision indicate that his position is something very different than that of the employees denominated “Maintenance Associate.” In fact, Vice President of Operations Hankins testified, regarding Employer’s Exhibit 12, that York is within the *separate classification* of “Lot Maintenance.” Tr. at 116.

The evidence shows that Blanchette and York perform distinct functions for the Employer that are not shared by the employees within the stipulated bargaining unit. Blanchette and York do not share a community of interest with the bargaining unit employees. See *DTG Operations*, 357 NLRB at 2126–27..

2. The Lot Auditor and the Skilled Maintenance Employee regularly travel outside of the stipulated bargaining unit.

The Regional Director correctly determined that Blanchette and York have insufficient contact with the employees in the stipulated bargaining unit because they regularly travel outside of the unit. RD Decision at 5. This conclusion is well-supported by Board precedent. *See, e.g., Banco Credito y Ahorro Ponceno*, 160 NLRB 1504, 1509 (1966) (although the excluded employees are based in the petitioned-for facility, “the work of both [excluded] employees

requires substantial travel throughout the island, [thus] we find that they do not share a sufficient community of interest with employees in San Juan, and we shall exclude them from the unit.”).

The bargaining unit employees report to and perform all their duties in an assigned parking facility within the stipulated bargaining unit. Tr. at 130. By contrast, the testimony and documentary evidence presented at hearing show that Blanchette and York spend the majority of their time traveling among the Employer’s parking facilities, including those outside of the stipulated unit. For example, the data supplied by the Employer in Employer’s Exhibit 1 and Blanchette’s testimony and relied upon by the Regional Director clearly support the conclusion that Blanchette spends less than ten percent of his time in bargaining unit parking facilities. RD Decision at 4; Employer’s Exhibit 1; Tr. at 13, 24, 33. Although the stipulated bargaining unit includes only thirteen parking facilities, Blanchett performs his duties in thirty-two of the Employer’s parking facilities. Employer’s Ex. 1 (showing the different parking facilities by number). Similarly, York travels among all the Employer’s parking facilities and is not stationed at a single place within the stipulated bargaining unit. In fact, Blanchette and York travel outside the unit to such an extent that employees in the stipulated unit testified that they rarely see Blanchette or York in the normal course of their duties. Tr. at 129 (Williams testifying that she sees Blanchette and York about once per month); 143–45 (Gordy testifying that she doesn’t see Blanchette or York).

The evidence shows that Blanchette and York regularly travel outside of the unit such that they do not share a community of interest with the bargaining unit employees.

3. The Lot Auditor and the Skilled Maintenance Employee do not interchange with employees in the stipulated bargaining unit.

The Regional Director correctly determined that Blanchette and York do not interchange with the employees in the stipulated bargaining unit. RD Decision at 5. The Board recognizes

that one-way interchange or interchange which is only “infrequent and incidental to their primary duties” is insufficient to establish an overwhelming community of interest. *DPI Secureprint*, 362 NLRB No. 172 (2015), slip op. at 6.

Blanchette and York do not fill in for or perform tasks typically performed by employees in the stipulated unit. Tr. at 49, 63, 68, 73–74. Conversely, unit employees do not and could not perform the work of Blanchette and York. Tr. at 127, 134, 146, 171–72. In fact, Blanchette and York each testified that no one fills in for them when they are gone for vacation. Tr. at 40, 65.

Further, York’s testimony at the hearing makes clear that the assistance he receives from Maintenance Associate Russell Marshall is infrequent and mostly limited to instances where York needs to move heavy or cumbersome items. Tr. at 53 (moving mattresses), Tr. at 66 (moving boxes). By contrast, there is no evidence of York filling in for or helping out employees within the stipulated bargaining unit.² Similarly, Blanchette does not perform the bargaining unit duties nor do bargaining unit employees assist with or perform Blanchette’s duties. The Employer points to one instance of permanent interchange when Blanchette transferred from Lot Attendant to Lot Auditor. This does not outweigh the overwhelming evidence that, in his current position, Blanchette does not interchange with the employees in the stipulated unit. Tr. at 128–30.

The evidence shows that Blanchette and York do not interchange with employees in the stipulated bargaining unit. They do not share an overwhelming community of interest with the bargaining unit. *See DPI Secureprint*, 362 NLRB No. 172 (2015), slip op. at 5.

² The Employer notes that York periodically works at the Company’s West Chester County Courthouse lot. However, this parking facility is not within the stipulated bargaining unit, Board Ex. 1, and York does not perform bargaining unit duties while he is stationed there, Tr. at 74 (York testifying that he only “hang[s] out” and “wait[s] until somebody gets there.”).

4. The Lot Auditor and the Skilled Maintenance Employee have distinct supervision.

The Regional Director correctly concluded that the Company's supervisory structure further supports that Blanchette and York do not share an overwhelming community of interest with the employees in the stipulated bargaining unit. RD Decision at 5. Testimony presented at the post-election hearing shows that Blanchette and York report to Area Managers, while the employees in the bargaining unit report to Facility Managers. Tr. at 26, 52; *see also* Tr. at 79 (Vice President of Operations Chris Hankins testifying: "There are maintenance associates, lot attendants, [lot] supervisors, cashiers, customer service folks who work at . . . the facility manager's supervision."). The lack of common day-to-day supervision precludes finding that employees share a community of interest. *See NV Energy*, 362 NLRB No. 5 (2015), slip op. at 4. Thus, the Regional Director correctly determined that that Blanchette and York do not share a community of interest with employees in the stipulated bargaining unit.

5. The Lot Auditor and the Skilled Maintenance Employee receive higher wages than employees in the stipulated bargaining unit.

The Regional Director correctly concluded that the higher wage rates paid to Blanchette and York distinguish them from the stipulated bargaining unit. RD Decision at 5 n.3. The evidence supports that the Lot Auditor and the Skilled Maintenance Employee are compensated at a higher rate that cannot be explained by seniority alone. The Board recognizes that different wage rates weighs against finding that employees share a community of interest. *See Shares, Inc.*, 343 NLRB 455, 457 (2004); *Scolari's Warehouse Markets*, 319 NLRB 153, 158 (1995).

Vice President of Operations Hankins testified that Blanchette is paid a "premium" as a Lot Auditor. Tr. at 107. As a result, Blanchette is paid \$11.75 per hour as a part-time employee in his fifth year of employment. Tr. at 47. This rate is higher than that paid to most of the bargaining unit employees, even those who have more seniority. *See, e.g.*, Tr. at 149. York is

similarly paid at a higher rate of \$15.90 per hour. Tr. at 51. This rate is \$3.00 per hour higher than anyone else in the bargaining unit, including the most-senior bargaining unit employee. Employer's Ex. 15; Tr. at 115.³

Thus, the evidence shows that Blanchette and York receive a different, higher wage rate—unexplained by seniority—than employees in the bargaining unit. They do not share a community of interest with the bargaining unit employees.

CONCLUSION

In sum, the Regional Director correctly determined that Lot Auditor Blanchette and Skilled Maintenance Employee York should be excluded from the stipulated unit because they do not share an overwhelming community of interest with the included employees. For the foregoing reasons, the Board should deny the request for review.

May 23, 2017

Respectfully submitted,



Roseann R. Romano
MURPHY ANDERSON PLLC
1401 K Street NW, Suite 300
Washington, DC 20005
Tel. (202) 223-2620
Fax (202) 296-9600
rromano@murphypllc.com

³ The Employer also argues that the wage disparity among workers within the stipulated unit undermines the Regional Director's community-of-interest finding. However, the wage disparity between the highest-paid and most-senior cashier, Tr. at 122–23, and other more junior employees is a result of seniority. Under Board precedent, this is not grounds to upset a community-of-interest finding. *Shayne Bros., Inc.*, 213 NLRB 113, 114 (1974) (“[S]eniority has never been a basis for exclusion from an appropriate unit.”).

CERTIFICATE OF SERVICE

I certify that the foregoing Opposition to the Employer's Request for Review by the Board was electronically filed on May 23, 2017, through the Board's website and will be sent by means allowed under the Board's Rules and Regulations to all parties and the Regional Director.

/s/ Roseann R. Romano

Roseann R. Romano

MURPHY ANDERSON PLLC

1401 K Street NW, Suite 300

Washington, D.C. 20005

Phone: (202) 223-2620

Fax: (202) 296-9600

Email: rromano@murphypllc.com

UNITED STATES OF AMERICA
BEFORE REGION FOUR OF THE NATIONAL LABOR RELATIONS BOARD

COLONIAL PARKING, INC.
Employer

and

Case 04-RC-187843

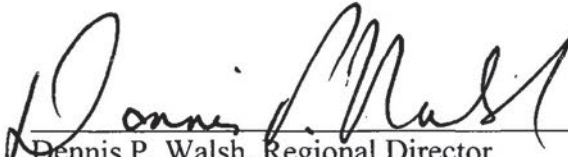
UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 27
Petitioner

ORDER

On March 23, 2018, the National Labor Relations Board issued an Order in this matter Granting Review in part and Remanding. The Board directed that I take further appropriate action consistent with *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017) and, if necessary, reopen the record for that purpose.

The parties are hereby directed to submit their positions by April 4, 2018, as to whether the proposed unit of employees, excluding the Lot Auditor and the Skilled Maintenance Employee, is an appropriate unit for collective bargaining when analyzed in light of *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017). By that same date, the parties are directed to submit their positions as to whether the record should be reopened in this matter, or whether the current record is adequate to make the necessary determination.

Dated: March 27, 2018.


Dennis P. Walsh, Regional Director
National Labor Relations Board, Region 4

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4

COLONIAL PARKING, INC.

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and

Case 04-RC-187843

UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 27

Petitioner

CORRECTED DECISION ON REMAND

This case has been remanded because *Specialty Healthcare*, the Board case on which my decision turned, was overruled after the Region's decision issued. In *PCC Structural, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017), the Board rejected the community of interest standard created in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), affd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), and reinstated the traditional standard for assessing the appropriateness of a petitioned-for unit when the employer argues that the unit improperly excludes certain employees. The remand, directs the Region to reevaluate the facts of this case under *PCC Structural*, and to reopen the record if additional facts are necessary to make a decision. Based on my conclusion that the petitioned-for employees do not share interests sufficiently separate and distinct from the Lot Auditor and Skilled Maintenance Employee to constitute an appropriate unit for bargaining, *PCC Structural*, supra, I find that the smallest appropriate unit requires the inclusion of the Lot Auditor and Skilled Maintenance Employee, and therefore direct that their ballots be opened and counted.

Procedural History

United Food and Commercial Workers, Local 27 (Petitioner) filed a petition to represent a unit of Attendants, Lot Attendants, Valet Attendants, Cashiers, Customer Service Employees, Floaters, and Maintenance Associates employed by Colonial Parking, Inc. (the Employer) at its parking lots and garages in Wilmington, Delaware. The Employer argued that the smallest appropriate bargaining unit must include two additional classifications containing one employee each: Lot Auditor and Skilled Maintenance Employee.

In a representation election held in this matter, the Lot Auditor and Skilled Maintenance Employee voted subject to challenge pursuant to stipulation. Because the two challenged ballots were sufficient to affect the results of the election, the Region conducted a hearing on the

challenged ballots.¹ On March 13, 2017, the Hearing Officer issued a Report recommending that the two challenges be sustained based on his conclusion that the Lot Auditor and Skilled Maintenance Employee do not share an overwhelming community of interest with the petitioned-for unit under *Specialty Healthcare*. In my decision dated April 28, 2017, I adopted the Hearing Officer's recommendations and issued a Certification of Representative. The Employer filed a Request for Review of my Decision, and the Petitioner filed its opposition. On December 15, 2017, while the Request for Review was pending, the Board issued its decision in *PCC Structural*s overruling *Specialty Healthcare*.

On March 23, 2018, the National Labor Relations Board issued an Order in this matter stating, in relevant part:

The case is remanded to the Regional Director for further appropriate action consistent with *PCC Structural*s, Inc., 365 NLRB No. 160 (2017), including reopening the record, if necessary. In all other respects, including the Employer's contention that the Regional Director's factual findings were clearly erroneous, the request for review is denied as it raises no substantial issues warranting review.

By order of March 27, 2018, I directed the parties to provide their positions as to whether the proposed unit of employees, excluding the Lot Auditor and the Skilled Maintenance Employee, is an appropriate unit for collective bargaining under *PCC Structural*s' revised standard, and whether the record should be reopened to obtain additional evidence on that question. On April 4, both parties timely provided position statements as to both issues.

As a threshold matter, I conclude that the record is sufficient to determine the issue before me without reopening the record. Based on the record and relevant Board cases, including *PCC Structural*s, I find, in agreement with the Employer, that the smallest appropriate bargaining unit requires inclusion of the Lot Auditor and Skilled Maintenance Employee. Because the Board denied the Employer's request for review regarding my prior factual findings, this decision incorporates by reference the complete procedural history and facts set forth in the Hearing Officer's Report and the Regional Director's Decision on Exceptions to the Hearing Officer's Report on Challenged Ballots.

Decision

I begin this Decision on Remand by discussing the adequacy of the record. Next, I analyze the record evidence under the community of interest factors articulated in *PCC Structural* and relevant Board law. Finally, I set forth my conclusions.

ADEQUACY OF THE RECORD

The parties concurred that the record is sufficient to determine whether the smallest appropriate unit in this case must include the Lot Auditor and Skilled Maintenance Employee.

¹ Although the Union also filed objections to the election, it withdrew them at the hearing.

The Employer further contended that, were the Region to deem it necessary to reopen the record, it should take evidence only as to employees' job functions and work; contact between employees; and the supervision of employees. I find that the facts of this matter have been set forth fully in the Hearing Officer's Report and in my Decision on Exceptions to the Hearing Officer's Report on Challenged Ballots. Upon review of the record as a whole and the position of the parties, I conclude that the record as it stands is sufficient to determine the sole issue in this case.

THE BOARD'S PCC STRUCTURALS STANDARD

On remand, I must determine only whether the petitioned-for unit, excluding Lot Auditor and Skilled Maintenance Employee, is an appropriate unit for bargaining. The Act requires that a petitioner seek representation of employees in *an* appropriate unit, not the most appropriate unit possible. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate. Once the Board determines that the employees in the unit sought by a petitioner share a community of interest, it must next evaluate whether the interests of that group are "*sufficiently distinct* from those of other [excluded] employees to warrant the establishment of a separate unit." *PCC Structurals*, supra, slip op. at 7, quoting *Wheeling Island Gaming*, 355 NLRB 637, 642 fn. 2 (2010) (emphasis in original). Specifically, the inquiry is whether "excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members." *PCC Structurals*, supra, slip op. at 11, quoting *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016) (emphasis in original). In making this assessment, *PCC Structurals* instructs the decision-maker to assess

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Id., slip op. at 11 (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). All relevant factors must be weighed in determining community of interest.

Based on the foregoing, I find that the petitioned-for unit is not appropriate because the employees in that requested unit do not possess a community of interest meaningfully separate and distinct from that of the Skilled Maintenance Employee and Lot Auditor.

Skills and Training

The Lot Auditor and Skilled Maintenance Employee cannot be distinguished from the petitioned-for unit based on skills or training. All of the employees perform routine unskilled labor, including the Skilled Maintenance Employee who, job title notwithstanding, performs routine light repair and maintenance work less challenging and difficult than typical skilled labor work. When the latter is needed – work that includes repairing mechanisms in gates, kiosks, and

snow blowers and patching concrete – it is performed by either Area Manager Jeff Garrison or an outside contractor, not the Skilled Maintenance Employee. Further, like the classifications in the petitioned-for unit, neither the Lot Auditor nor the Skilled Maintenance Employee requires specialized training or certifications. The only training needed is minimal on-the-job training specific to particular tasks, such as running a cash register or operating a bar code scanner. The only licensure requirement for any employees is a valid driver's license, one shared by the Valet, Lot Auditor and Skilled Maintenance Employee. Thus, the petitioned-for unit has no separate community of interest from the Lot Auditor and Skilled Maintenance Employee regarding their skills and training.

Functional Integration and Job Function

The petitioned-for unit employees, the Lot Auditor and the Skilled Maintenance Employee are all functionally integrated and have similar and overlapping job duties. All of the lot and maintenance employees play integral roles in the Employer's business of providing paid customer parking. Generally, their responsibilities include either customer service/ parking payment collection, maintenance of the parking facilities, or a mixture of both. For example, Cashiers, Customer Service/Cashiers, Customer Service/Maintenance/Supervisors, and the Lot Auditor are all directly responsible for ensuring that customers pay to utilize the Employer's parking services. Cashiers routinely interface with customers to calculate parking fees and ensure payment, while Customer Service/Cashiers and Customer Service/Maintenance/Supervisors interact with customers as needed to answer questions about the centralized payment kiosks and perform parking fee calculations and deductions. Although the Lot Auditor uses a bar code scanner and travels daily among lots resulting in minimal customer contact, he, like the unit employees in cashier and customer service positions, has the general duty of ensuring customer payment, and he does answer customer questions on occasion. Valets likewise provide customer service by securing keys from customers and valeting their vehicles. Finally, the Lot Auditor shares with the Customer Service Employees the additional responsibility of booting the vehicles of illegal parkers who have not paid for service.

In the maintenance realm, multiple unit classifications are, like the Skilled Maintenance Employee, tasked with maintaining function and cleanliness in the Employer's parking facilities. For example, Customer Service/Cashier, Customer Service/Maintenance/Supervisor and Government Center Employee are all required to perform at least minor cleaning and trash collection in their assigned garage or lot, as is the Skilled Maintenance Employee. Customer Service/Maintenance/Supervisors are responsible for general maintenance duties such as running a power sweeper, emptying garbage cans, sweeping, filling ticket machines and performing light snow removal. The Skilled Maintenance Employee similarly collects trash that has been collected by employees at each facility and deposits it in a centralized dumpster, evidencing a high degree of functional integration with those employees. Further, the Skilled Maintenance Employee delivers maintenance equipment such as power sweepers and snow removal tools, to the lots and garages for unit employee use. At the Government Center garage, the Government Center Custodian is responsible for maintenance, including trash removal, cleaning bathrooms, equipment, elevators, stairwells and sidewalks, removing snow, replacing light bulbs, light gardening, and running the power sweeper. Similarly, the Skilled Maintenance Employee is responsible for maintenance and cleaning throughout multiple garages and lots, including

removing broken glass, trash, and leaves. When large trash objects such as wet mattresses require removal from lots, the Skilled Maintenance Employee removes the objects with the help of the Government Center Custodian.

The challenged classifications also have observational and reporting duties similar to those of the petitioned-for unit classifications. Within the petitioned-for unit, Customer Service/Cashiers are responsible for counting and reporting the number of vehicles parked in their assigned garages, Customer Service/Maintenance/Supervisors monitor activity within their assigned facilities and create incident reports, and Valets and Lot/Valet Attendants monitor pedestrian traffic to ensure customer safety within the lots. With respect to the challenged positions, the Lot Auditor inspects each vehicle for a parking sticker and reports noncompliance issues to the office, and the Skilled Maintenance Employee submits a daily report of maintenance activities required at each lot along with records of time spent performing other activities.

The Lot Auditor and Skilled Maintenance Employee admittedly have some duties that are distinct from those of the petitioned-for employees. For example, both of the challenged employees travel among various Employer worksites throughout the day, and in an Employer-provided vehicle, rather than remaining at one location like employees in the petitioned-for unit. Further, the Lot Auditor alone uses the barcode scanning device to perform his duties, although it requires no unique skill or significant training to operate and therefore is not sufficiently distinct to separate his interests from those of the petitioned-for unit employees.

Citing *Banco Credito y Ahorro Ponceno*, 160 NLRB 1504, 1509 (1966), the Petitioner argues that because the Skilled Maintenance Employee and Lot Auditor travel in Employer vehicles outside the petitioned-for unit, they do not share a community of interest with the petitioned-for unit. That case is distinguishable, however. In that case, the petitioned-for unit employees worked in 13 branch offices in San Juan, Puerto Rico, and the two excluded employees at issue, although based out of one of the San Juan offices, traveled extensively throughout Puerto Rico to many other branch offices in other cities, each of which office was found to be a separate appropriate unit. Unlike that case, the Lot Auditor starts his day at the Government Center Garage and travels among surface lots throughout Wilmington, coming into contact with petitioned-for unit employees about 10% of the time. Likewise, the Skilled Maintenance Employee travels to lots in Wilmington where petitioned-for unit employees are assigned. Accordingly, while the itinerant nature of the two positions is different than the classifications in the petitioned-for unit, it does not create a community of interest sufficiently distinct from that of the petitioned-for unit to warrant a separate unit.

Apart from the maintenance duties he shares with petitioned-for unit employees, the Skilled Maintenance Employee has additional duties, such as repairing wooden gate arms, clearing storm drains, moving bumpers into place, and cutting grass. He also has the unique responsibility to deliver laundered uniforms and equipment to employees at the Employer's lots and garages. Importantly, however, those various additional job duties are integral to the ability of the petitioned-for unit employees to perform their functions. Further, the work is not so distinct or highly skilled as to place his interests outside those of the petitioned-for unit. Finally, the Skilled Maintenance Employee's duties overlap with those of the Government Center

Custodian. The high level of integration, similar functions and overlapping work duties lead me to conclude that the Lot Auditor and Skilled Maintenance Employee share a community of interest with the petitioned-for unit with respect to these factors.

Terms and Conditions of Employment

Based on their hourly pay structure, benefits, bonuses, uniforms, schedules, and clock-in/clock-out procedures, the Lot Auditor and Skilled Maintenance Employee cannot be distinguished from the employees in the petitioned-for unit on the basis of terms and conditions of employment. Like those employees, the Lot Auditor and Skilled Maintenance Employee are paid an hourly rate and receive the same bonuses and benefits, the latter prorated for part-time work. The only significant difference in compensation is that the Skilled Maintenance Employee's hourly rate is \$3.00 higher than all other employees. But while a higher wage can correlate with a higher skill level rendering an employee's inclusion in a unit inappropriate, see *Scolari's Warehouse Markets*, 319 NLRB 153, 158 (1995), here, where the employee indisputably performs unskilled labor, his wage does not reflect a skill level requiring his exclusion from the unit.

Further, all employees have a set schedule, and follow the same procedure to clock in and out for their shifts by using a computer or telephone. Thus, like all the other petitioned-for unit employees who report to work at the Government Center lot, the Lot Auditor and Skilled Maintenance Employee clock in at a computer. In addition, the Employer provides uniforms for all employees, which are cleaned at the main office and then returned to the employees.

Accordingly, the Skilled Maintenance Employee and Lot Auditor share significant terms and conditions of employment with the petitioned-for unit.

Contact and Interchange

There is minimal evidence of interchange between the Lot Auditor and Skilled Maintenance Employee, and the petitioned-for unit. The Lot Auditor does not temporarily interchange with other employees, although he did serve as a Lot Attendant prior to his transfer, providing one instance of permanent interchange. The Skilled Maintenance Employee also has very limited interchange and only with the Lot Auditor, performing the latter's duties in West Chester, Pennsylvania on a short-term, emergency basis. No employees in the petitioned-for unit substitute for the Lot Auditor or Skilled Maintenance Employee when they are absent from work.

At the same time, there is no significant, widespread interchange among employees within the petitioned-for unit "suggest[ing] blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). Certain petitioned-for classifications, such as floaters and Customer Service employees, interchange on a temporary basis by filling in for each other or covering partial shifts. However, as to other classifications, such as the Government Center Custodian and valet, there is no evidence that they temporarily interchange with petitioned-for unit employees. Some permanent interchange occurs among classifications in the petitioned-for unit when employees switch job functions

locations, but overall, this workforce's limited interchange does not suggest the blurred lines of a truly fluid workplace. In any event, although interchange is a relevant inquiry, the Board has approved units where employees lack significant interchange. See, e.g., *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 5-6 (2016) (finding a community of interest despite lack of employee interchange and functional integration); *International Bedding Co.*, 356 NLRB 1336, 1337 (2011) (employees' different job functions and absence of interchange did not preclude finding a community of interest); *Jerry's Chevrolet, Cadillac, Inc.*, 344 NLRB 689, 691 (2005) (finding that irregular and insubstantial interchange and separate management was outweighed by the remaining community of interest criteria).

The amount of work-related contact among employees is also relevant to the community of interest determination. Generally, employees in the petitioned-for unit are each regularly assigned to a particular parking facility for their entire shift, and they have contact with other employees at the same facility, but do not have contact with employees at the Employer's other locations. Similarly, employees in the Government Center Garage have contact with each other.

The Lot Auditor, by contrast, spends less than 10% of his workday at lots attended by employees in the petitioned-for unit, but when he does, he has some contact with those employees. For example, he might ask the lot attendant if there is anything he needs to be aware of before he begins scanning, or if he comes across a vehicle with an ineffective barcode, he will ask the lot attendant if that person knows why the vehicle is there. The Skilled Maintenance Employee, on the other hand, has very frequent contact with unit employees, arguably more than any employee in the petitioned-for unit since he picks up trash from their lots, delivers power sweepers to the maintenance associates in the garages, delivers snow shovels and salt to the garage and lot employees, and collects their soiled uniforms and returns them once they are laundered. The Skilled Maintenance Employee also has contact and overlap with the Government Center Custodian, whom he assists with various tasks as needed. The Skilled Maintenance Employee's frequent contact with the unit thus strongly supports his inclusion in it, and the Lot Auditor's occasional contact, considered alongside the other community of interest factors, warrants a finding that he also shares a community of interest with the petitioned-for unit.

Supervision & Departmental Organization

The Lot Auditor and Skilled Maintenance Employee report to Area Managers Robert Clark and Jeff Garrison, respectively, while the petitioned-for unit employees report to facility managers. However, they share common overall supervision because the facility managers report to Garrison and Clark and everyone ultimately reports to the Vice President of Operations. Although their separate immediate supervision weighs in favor of finding a separate unit, it does not compel that result. See e.g. *Aztar Indiana Gaming Co., LLC*, 349 NLRB 603, 607 (2007), citing *Hotel Services Group, Inc.*, 328 NLRB 116, 117 (1999) (separate supervision does not mandate separate units); *Huckleberry Youth Programs*, 326 NLRB 1272, 1274 (1998) (a community of interest was found based on functional integration even where employees' wages and benefits differed and they shared only secondary and overall supervision).

The Employer's organizational structure is not defined by clear departments. While the Skilled Maintenance Employee stated that he was in "the maintenance department," it appears that the Employer divides its workforce between the two area managers largely based on location, with Garrison handling the Southern Wilmington, Delaware lots as well as maintenance positions, and Clark bearing responsibility for the Northern Wilmington lots. Where representational groupings selected by the petitioner are arbitrary, they should be rejected. See generally *Transerv Systems, Inc.*, 311 NLRB 766 (1993); *The Phoenician*, 308 NLRB 826 (1992). Here, the petitioned-for unit does not comport with any Employer organizational structure, and therefore this factor is neutral.

Appropriateness of the Petitioned-For Unit

Based on the foregoing, I conclude that the petitioned-for unit is not appropriate, as the Lot Auditor and Skilled Maintenance Employee do not have meaningfully distinct interests in the context of collective bargaining that outweigh their similarities with the petitioned-for unit. *PCC Structural*s, supra, slip op. at 11, quoting *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016). The petitioned-for unit has few community of interest factors in common that are not also shared with the Lot Auditor and Skilled Maintenance Employee.

The Lot Auditor and Skilled Maintenance Employee are highly integrated with the petitioned-for unit, share the same minimal level of job skills and training, and operate under the same terms and conditions of employment. The Skilled Maintenance Employee has frequent contact with the petitioned-for unit, and the Lot Auditor maintains some contact with them, albeit less. Although the Lot Auditor and Skilled Maintenance Employee positions are in some ways distinct from the other classifications, fundamentally they work in conjunction with the petitioned-for unit to support the Employer's core business: providing paid parking in its garages and lots. And while there is little interchange between the excluded employees and the petitioned-for unit and the two groups do not share direct supervision, I find these factors are outweighed by the significant factors they have in common.

Contrary to the Petitioner's assertion, a separate residual unit consisting of the Skilled Maintenance Employee and the Lot Auditor would not be an appropriate unit. These two employees each have a stronger community of interest with the petitioned-for unit than they do with each other. For example, the Skilled Maintenance Employee is similar to the Government Center Custodian, as they share a common cleaning and maintenance function without much customer interface, report to the same building, and work side-by-side on certain projects such as removing large debris. Further, the Skilled Maintenance Employee interfaces with unit employees at the garages and lots to collect trash and deliver equipment. Meanwhile, the Lot Auditor shares a closer community of interest with the Cashiers and Attendants than he does with the Skilled Maintenance Employee, since they all ensure that customers pay for parking, and in some instances, they share enforcement duties including booting offending vehicles. Accordingly, it would not be appropriate to place the Lot Auditor and Skilled Maintenance Employee in a separate unit without the petitioned-for employees. Finally, exclusion of the Lot Auditor and Skilled Maintenance Employee from the unit would create a small residual unit,

which the Board seeks to avoid. See *Airco, Inc.*, 273 NLRB 348, 349 (1984). In these circumstances, their inclusion in the unit is clearly warranted.

CONCLUSION

For the reasons explained above, I find that that the petitioned-for unit is not appropriate and that an appropriate unit requires inclusion of the Skilled Maintenance Employee and Lot Auditor under *PCC Structural*s, supra. I find that the following employees constitute a unit appropriate for the purposes of collective bargaining:

Included: All full-time and regular part-time Attendants, Lot Attendants, Valet Attendants, Cashiers, Customer Service Employees, Floaters, Maintenance Associates, Lot Auditor and Skilled Maintenance Employee employed by the Employer at the following facilities, all located in Wilmington, Delaware:

1. 9th Street & French Street
2. 10th Street & Washington
3. 12th Street & Orange Street
4. 12th Street & Washington Street
5. 222 Delaware Ave.
6. 401 King Street
7. 510 North King Street
8. 503 S. Market Street
9. 711 Orange Street
10. 713 Shipley Street
11. 903 Shipley Street
12. 1000 King Street
13. 1201 N. Market Street

Excluded: All office clerical employees, administrative and bookkeeping employees, managerial employees, guards and supervisors as defined in the Act.

I hereby find that Lot Auditor Neil Blanchette and Skilled Maintenance Employee Paul York are eligible voters and direct that the challenged ballots they cast be opened, commingled and counted.

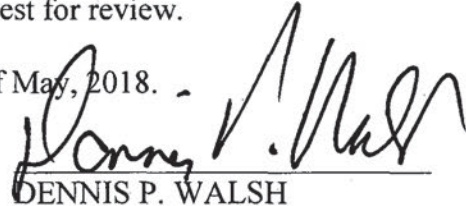
Pursuant to the provisions of Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, D.C., a request for review of this decision. The request for review must confirm with the requirements of Sections 102.67 (e) and (i)(I) of the Board's Rules and must be received by the Board in Washington by May 30, 2018. If no request for review is filed, the decision will be final and shall have the same effect as if issued by the Board.

A request for review may be E-filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number and follow the detailed instructions. If not E-Filed, the request for

Colonial Parking, Inc.
Case 04-RC-187843

review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street, SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the undersigned. A certification of service must be filed with the Board together with the request for review.

Dated at Philadelphia, Pennsylvania this 16th day of May, 2018. -

A handwritten signature in black ink, appearing to read "Dennis P. Walsh", is written over a horizontal line.

DENNIS P. WALSH
Regional Director
National Labor Relations Board
615 Chestnut Street, Suite 710
Philadelphia, PA 19106



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 04
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Agency Website: www.nlr.gov
Telephone: (215)597-7601
Fax: (215)597-7658

June 7, 2018

Peter G. Fischer I, Esquire
Baker & Hostetler LLP
Washington Square
1050 Connecticut Avenue, NW, Suite 1100
Washington, DC 20036-5304

Louis J. Cannon, Esquire
Baker & Hostetler LLP
Washington Square
1050 Connecticut Avenue, NW, Suite 1100
Washington, DC 20036-5304

Re: Colonial Parking, Inc.
Case 04-RC-187843

Dear Mr. Fischer and Mr. Cannon:

This is to advise you that the Petitioner's request to withdraw the petition in the above case has been approved.

Very truly yours,

/s/ Dennis P. Walsh

DENNIS P. WALSH
Regional Director

cc: Jed Hatfield, President
Colonial Parking, Inc.
715 Orange Street
Wilmington, DE 19801

Nelson L. Hill, Director of Organizing
United Food and Commercial Workers
(UFCW), Local 27
21 West Road, Suite 200
Baltimore, MD 21204
(Authorizations Returned)

Roseann R. Romano, Esquire
Adam C. Breihan, Esquire
George R Murphy, Esquire
Murphy Anderson PLLC
1401 K Street, NW, Suite 300
Washington, DC 20005-3422